

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAVOGIA JACKSON, :
: :
Plaintiff, :
: :
- against - : Case No. 20 Civ. 2008 (PMH)
: :
ANTHONY J. ANNUCCI, Acting Commissioner of the : **NOTICE OF MOTION**
New York State Department of Corrections and Community :
Supervision, et al., :
: :
Defendants. :
: :
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PLEASE TAKE NOTICE that, upon the motion filed herein, the accompanying memorandum of law, and all other pleadings and papers filed herein, Defendants Acting-Commissioner Anthony J. Annucci, Deputy Commissioner Donald Venetozzi, Superintendent Mark Royce, Commissioner Hearing Officer Eric Gutwein, Lieutenant Derek Deegan, Sergeant Rosita Rossy, Correction Officer Raymond Dahl, and Correction Officer William Rivera, employees of the New York State Department of Corrections and Community Supervision (“DOCCS”), by their attorney, Letitia James, the Attorney General of the State of New York, will move this Court before the Honorable Philip M. Halpern, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Amended Complaint as against Defendants on the grounds that (1) Defendant Annucci’s position as the Acting Commissioner of DOCCS and Defendant Royce’s position as Superintendent of Plaintiff’s facility, and the alleged failure of Defendant Venetozzi to address Plaintiff’s letter and appeal of a disciplinary hearing do not demonstrate sufficient personal involvement to support the claims against them. Additionally, the AC’s conclusory allegations against Defendants Deegan and

Dahl do not establish their personal involvement to support an Eighth or Fourteenth Amendment claim against them. (2) The AC does not allege a valid Fourteenth Amendment procedural due process claim against either Defendant Gutwein or Defendant Rivera. (3) The AC does not allege a valid Eighth Amendment conditions of confinement claim against Defendant Gutwein or Defendant Royce. (4) The AC does not allege a valid Eighth Amendment deliberate indifference to medical needs claim against Defendant Rossy. (5) The AC does not allege a valid First Amendment retaliation or conspiracy claim against any Defendant. (6) The AC's alleged violations of DOCCS directives does not give rise to a federal constitutional claim against any Defendant. (7) Defendants are entitled to qualified immunity because their actions did not violate clearly established law or it was objectively reasonable for Defendants to so believe. And for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, unless otherwise ordered by the Court, pursuant to the timelines of the briefing schedule endorsed by the Court On September 29, 2020, opposition papers, if any, are to be filed by January 4, 2021, and Defendants' reply will be filed by January 18, 2021.

Dated: New York, New York
December 4, 2020

Motion denied without prejudice to renew. Defendants failed to comply with Rule 2(C) of this Court's Individual Practices which requires the filing of a pre-motion conference letter requesting permission to move to dismiss. Defendants shall file their pre-motion conference letter, if so advised, by December 21, 2020. Defendants are instructed to mail a copy of this Order to Plaintiff and provide proof of service on the docket. The Clerk is instructed to terminate ECF No. 43.

SO ORDERED.



Philip M. Halpern, U.S.D.J.

Dated: New York, NY
December 7, 2020

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
By:

/s/ Jonathan J. Wilson
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